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LENOVO (UNITED STATES) INC.

8
9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

11 ANDREW AXELROD and ELIOT BURK,
individually and on behalf all others similarly
12 situated,

13 Plaintiffs,

14 v.

15 LENOVO (UNITED STATES) INC., a
Delaware corporation,

16 Defendant.
17

Case No. 4:21-cv-06770-JSW

Assigned to the Hon. Jeffrey S. White

DEFENDANT LENOVO (UNITED STATES) INC.'S:

(1) **NOTICE OF MOTION AND MOTION TO DISMISS; AND**

(2) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

[Proposed Order submitted concurrently herewith]

Hearing:

Date: January 14, 2022

Time: 9:00 a.m.

Courtroom: 5

Complaint Filed: August 31, 2021

Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Andrew Axelrod (“Axelrod”) and Eliot Burk (“Burk” and, collectively with
4 Axelrod, “Plaintiffs”) each purchased a laptop from Defendant Lenovo (United States) Inc.
5 (“Lenovo”) because they allegedly believed they were receiving a discount from the laptop’s
6 advertised “regular price.” The *Class Action Complaint* (“*Complaint*”) alleges that the advertised
7 “regular price” was not, in fact, the laptop’s “true regular price” and Plaintiffs did not, in fact, receive
8 the deal they believed they were receiving. Based on these allegations, the *Complaint* asserts legal
9 claims (e.g., breach of contract) and seeks legal remedies (e.g., damages). Based on the same
10 allegations, the *Complaint* also asserts equitable claims (e.g., violation of California’s Unfair
11 Competition Law (“UCL”), violation of California’s False Advertising Law (“FAL”)) and seeks
12 equitable remedies (e.g., restitution, injunctive relief) – ***without alleging (plausibly or otherwise)***
13 ***that the legal remedies Plaintiffs seek are inadequate to remedy their alleged injuries (i.e.,***
14 ***overpayment of money).*** As the Ninth Circuit recently made clear in *Sonner v. Premier Nutrition*
15 *Corp.*, 971 F.3d 834 (9th Cir. 2020), however, a plaintiff cannot pursue equitable claims or remedies
16 if he has an adequate remedy at law. Under *Sonner* and its progeny, because the *Complaint* does
17 not allege that Plaintiffs lack an adequate remedy at law, Plaintiffs’ equitable claims and equitable
18 remedies must be dismissed. Perhaps more starkly here than in *Sonner*, a remedy at law could not
19 be inadequate since the alleged conduct relates to one thing – ***price***, not the nature of the product.
20 Price is inherently subject to a remedy at law.

21 **II. RELEVANT ALLEGATIONS AND PROCEDURAL BACKGROUND**

22 **A. Plaintiffs’ Alleged Purchases**

23 On September 5, 2019, Burk allegedly accessed Lenovo’s website available at the domain
24 www.lenovo.com (the “Website”) and purchased a laptop. Dkt. 1 ¶ 87. The Website allegedly
25 “offered [the laptop] for sale for \$1,189, and represented to Burk that he would save \$1,170 off the
26 Web Price of \$2,359.00” if he used an eCoupon. *Id.* ¶ 88. Burk, allegedly understanding the
27 \$2,359.00 “Web Price” to be the laptop’s “regular price” and after obtaining “an additional five
28 percent discount,” purchased the laptop for \$1,129.55 because he was “[e]nticed by the idea of

1 paying significantly less than [the] regular price....” *Id.* ¶¶ 89-96. The *Complaint* alleges, however,
2 that, “prior to [Burk’s] purchase, ... Lenovo did not sell the [laptop] for \$2,539 for a reasonably
3 substantial period of time, if at all.” *Id.* ¶ 98.

4 Similarly, on January 1, 2021, Axelrod allegedly accessed the “Website and purchased a
5 laptop. *Id.* ¶ 75. The Website allegedly “offered [the laptop] for sale for \$949.99, and represented
6 to Axelrod that he would save \$1,329.01 off the Web Price of \$2,279.00” if he used an eCoupon.
7 *Id.* ¶ 76. Axelrod, allegedly understanding the \$2,279.00 “Web Price” to be the laptop’s “regular
8 price,” purchased the laptop for \$949.00 because he was “[e]nticed by the idea of paying
9 significantly less than [the] regular price....” *Id.* ¶¶ 77-82. The *Complaint* alleges, however, that,
10 “prior to [Axelrod’s] purchase, ... Lenovo did not sell the [laptop] for \$2,279 for a reasonably
11 substantial period of time, if at all.” *Id.* ¶ 85.

12 **B. Plaintiffs’ Complaint**

13 Plaintiffs filed the *Complaint* on August 31, 2021. *Id.* In it, Plaintiffs assert the following
14 causes of action on behalf of putative national and California classes: (1) breach of contract; (2)
15 breach of express warranty; (3) negligent misrepresentation; (4) intentional misrepresentation; (5)
16 unjust enrichment; (6) violation of the FAL (Cal. Bus. & Prof. Code §§ 17500 *et seq.*); (7) violation
17 of the FAL (Cal. Bus. & Prof. Code § 17501); (8) violation of the Consumers Legal Remedies Act
18 (“CLRA”); and (9) violation of the UCL. *Id.* ¶¶ 108-202. The *Complaint* prays for, *inter alia*,
19 injunctive relief under the FAL, CLRA, and UCL, restitution, actual damages, and punitive
20 damages. *Id.* at Prayer for Relief.

21 **III. APPLICABLE LEGAL STANDARD**

22 A Federal Rule of Civil Procedure 12(b)(6) motion should be granted when the complaint
23 fails “to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S.
24 544, 570 (2007). “[L]abels and conclusions” and “naked assertions devoid of further factual
25 enhancement” are insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor do “[t]hreadbare
26 recitals of the elements of a cause of action, supported by mere conclusory statements, ... suffice.”
27 *Id.* Dismissal is proper where “there is no cognizable legal theory or an absence of facts alleged to
28 support a cognizable legal theory.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

1 **IV. THE MOTION TO DISMISS SHOULD BE GRANTED**

2 **A. Plaintiffs’ Equitable Claims Should Be Dismissed Because The Complaint Does Not**
3 **Plausibly Allege Plaintiffs Lack An Adequate Legal Remedy**

4 Recent Ninth Circuit law holds that plaintiffs cannot pursue equitable claims unless they (at
5 minimum) plausibly allege that they lack an adequate remedy at law. *See, e.g., Sonner*, 971 F.3d at
6 844 (“a complaint seeking equitable relief” that does “not plead ‘the basic requisites of the issuance
7 of equitable relief’ including ‘the inadequacy of remedies at law’” fails) (quoting *O’Shea v.*
8 *Littleton*, 414 U.S. 488, 502 (1974)); *Banks v. R.C. Bigelow, Inc.*, No. 20-cv-06208 DDP (RAOx),
9 2021 U.S. Dist. LEXIS 84385, at *15 (C.D. Cal. May 3, 2021) (“District court[] cases following
10 *Sonner* have dismissed equitable claims for failure to allege an inadequate remedy at law”)
11 (collecting cases). Courts in the Ninth Circuit – including this Court – have confirmed that this rule
12 applies to UCL, FAL, and unjust enrichment claims – which are equitable in nature – and CLRA
13 claims seeking equitable relief (*e.g.*, restitution, injunctive relief).¹ *See, e.g., Sonner*, 971 F.3d at
14 845 (affirming dismissal of claims for equitable restitution under the UCL and CLRA); *Elizabeth*
15 *M. Byrnes, Inc. v. Fountainhead Commer. Capital, LLC*, No. CV 20-04149 DDP (RAOx), 2021
16 U.S. Dist. LEXIS 149146, at **8-9 (C.D. Cal. Aug. 6, 2021) (dismissing UCL and FAL claims);
17 *Gardiner II*, 2021 U.S. Dist. LEXIS 211251, at *24 (dismissing with prejudice unjust enrichment
18 and UCL claims and prayer for equitable relief); *Williams v. Tesla, Inc.*, No. 20-cv-08208-HSG,
19 2021 U.S. Dist. LEXIS 115279, at **19-22 (N.D. Cal. June 21, 2021) (dismissing claims for
20 restitution and injunctive relief under the CLRA, UCL, and FAL); *Banks*, 2021 U.S. Dist. LEXIS
21 84385, at **15-16 (dismissing “equitable claims under the UCL, FAL, and unjust enrichment”);

23 ¹ The UCL and FAL – which authorize only equitable relief in the form of injunctive relief and/or
24 restitution – are “equitable, rather than legal, in nature.” *Williams v. Apple, Inc.*, No. 19-CV-04700-
25 LHK, 2020 U.S. Dist. LEXIS 215046, at *24 (N.D. Cal. Nov. 17, 2020) (quoting *Nationwide*
26 *Biweekly Admin., Inc. v. Superior Court of Alameda Cty.*, 9 Cal. 5th 279, 299 (2020)). Similarly,
27 unjust enrichment is “an equitable rather than a legal claim.” *McKesson HBOC, Inc. v. N.Y. State*
28 *Common Ret. Fund, Inc.*, 339 F.3d 1087, 1091 (9th Cir. 2003); *see also Gardiner v. Walmart Inc.*,
No. 20-cv-04618-JSW, 2021 U.S. Dist. LEXIS 211251, at *19 (N.D. Cal. July 28, 2021) (White, J.)
 (“*Gardiner II*”). The CLRA authorizes both equitable relief – in the form of an injunction and/or
 restitution – and legal remedies. Cal. Civ. Code § 1780(a); *Gibson v. Jaguar Land Rover N. Am.*,
 No. CV 20-00769-CJC (GJSx), 2020 U.S. Dist. LEXIS 168724, at *10 (C.D. Cal. Sept. 9, 2020).

1 *Gardiner v. Walmart Inc.*, No. 20-cv-04618-JSW, 2021 U.S. Dist. LEXIS 75079, at **19-21 (N.D.
2 Cal. Mar. 5, 2021) (White, J.).

3 Here, the *Complaint* asserts equitable FAL, UCL, and unjust enrichment claims and seeks
4 equitable remedies (restitution and injunctive relief) under the CLRA. Dkt. 1 ¶¶ 157-202, Prayer
5 for Relief. The *Complaint*, however, does not allege (explicitly or otherwise) that Plaintiffs lack an
6 adequate remedy at law. *See, generally*, Dkt. 1. On the contrary, the *Complaint* repeatedly alleges
7 Plaintiffs have suffered “damages” and “ascertainable loss[es],” and asserts that Plaintiffs seek to
8 recover their “actual damages.” *See, e.g., id.* ¶¶ 117, 131, 143, 198, Prayer for Relief. Thus, far
9 from demonstrating Plaintiffs lack adequate legal remedies, the *Complaint* concedes they have been
10 damaged and seeks legal remedies (damages) to redress that harm. As *Sonner* and its progeny
11 demonstrate, these facts require dismissal of Plaintiffs’ equitable FAL, UCL, and unjust enrichment
12 claims and prayer for the equitable remedies of restitution and injunctive relief. *See, e.g., TopDevz,*
13 *LLC v. LinkedIn Corp.*, No. 20-cv-08324-SVK, 2021 U.S. Dist. LEXIS 145186, at **14-15 (N.D.
14 Cal. Aug. 3, 2021) (dismissing UCL claim where plaintiffs sought “damages under various causes
15 of action” and did not “allege that the damages they seek are inadequate or otherwise distinguish
16 their request for restitution from the request for damages”); *Watkins v. MGA Entm’t, Inc.*, No. 21-
17 cv-00617-JCS, 2021 U.S. Dist. LEXIS 138888, at **50-51 (N.D. Cal. July 26, 2021) (dismissing
18 plaintiffs’ claims for equitable relief under the UCL and CLRA for failure to allege “facts
19 establishing that their remedies at law are inadequate”); *Shay v. Apple Inc.*, No. 20-cv-1629-GPC
20 (BLM), 2021 U.S. Dist. LEXIS 84415, at **5-12 (S.D. Cal. May 3, 2021) (dismissing UCL claim
21 and equitable relief plaintiff sought in CLRA claim); *Banks*, 2021 U.S. Dist. LEXIS 84385, at **15-
22 16 (dismissing with prejudice plaintiffs’ “equitable claims under the UCL, FAL, and unjust
23 enrichment and request for equitable relief” because “[p]laintiffs cannot seek equitable relief absent
24 plausible allegations that they lack an [a]dequate legal remedy”); *In re Cal. Gasoline Spot Mkt.*
25 *Antitrust Litig.*, No. 20-cv-03131-JSC, 2021 U.S. Dist. LEXIS 59875, at **27-31 (N.D. Cal. Mar.
26 29, 2021) (dismissing UCL claim due to failure to allege that they lack an adequate remedy at law);
27 *Clark v. Am. Honda Motor Co.*, No. CV 20-03147-AB (MRWx), 2021 U.S. Dist. LEXIS 64520, at
28 **26-30 (C.D. Cal. Mar. 25, 2021) (dismissing CLRA, UCL, and unjust enrichment claims for

1 failure to allege lack of an adequate remedy at law); *Sharma v. Volkswagen AG*, No. 20-cv-02394-
2 JST, 2021 U.S. Dist. LEXIS 47250, at *29 (N.D. Cal. Mar. 9, 2021) (“[b]ecause they have not shown
3 that legal remedies are unavailable or inadequate..., [p]laintiffs’ CLRA, UCL, and unjust
4 enrichment claims must be dismissed”); *Williams*, 2020 U.S. Dist. LEXIS 215046, at *29
5 (dismissing FAL and UCL claims with prejudice “like other courts evaluating FAL and UCL claims
6 where plaintiffs have an adequate remedy at law”); *In re Macbook Keyboard Litig.*, 2020 U.S. Dist.
7 LEXIS 190508, at **12-14 (N.D. Cal. Oct. 13, 2020) (dismissing UCL claim in its entirety “and the
8 remaining claims ... to the extent they seek an injunction, restitution, or other equitable relief” based
9 on *Sonner*); *Gibson*, 2020 U.S. Dist. LEXIS 168724, at **9-10 (dismissing UCL and CLRA
10 restitution claims because *Sonner* “very recently made clear” that the requirement to establish an
11 inadequate remedy at law “applies to claims for equitable relief under both the UCL and CLRA”).

12 Dismissal should be with prejudice. The *Complaint* does not allege (plausibly or otherwise)
13 that Plaintiffs lack an adequate remedy at law because it cannot. The alleged injury – overpayment
14 due to allegedly false and deceptive reference pricing – is inherently subject to a remedy at law.
15 Indeed, Plaintiffs’ legal and equitable claims are based on the same “factual predicates” (*Rodriguez*
16 *v. Just Brands USA, Inc.*, No. 2:20-CV-04829-ODW (PLAx), 2021 U.S. Dist. LEXIS 94413, at *21
17 (C.D. Cal. May 18, 2021)) – namely, the alleged use of false or deceptive pricing. *Compare* Dkt. 1
18 ¶¶ 108-156 *with id.* ¶¶ 157-202. That this is true demonstrates that “no amendment could cure”
19 Plaintiffs’ failure to “plausibly allege [they] lack[] an adequate remedy at law,” which renders
20 dismissal with prejudice proper. *See, e.g., Rodriguez*, 2021 U.S. Dist. LEXIS 9441, at *21
21 (dismissing claims for restitution with prejudice post-*Sonner* “[b]ecause [p]laintiffs’ CLRA, UCL,
22 and FAL claims are all based on the same factual predicates”) (citations omitted).

23 **V. CONCLUSION**

24 For the foregoing reasons, Lenovo respectfully requests that the Court grant the *Motion to*
25 *Dismiss*, and dismiss Plaintiffs’ equitable FAL, UCL, and unjust enrichment claims and prayer for
26 the equitable remedies of restitution and injunctive relief.

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SHEPPARD MULLIN RICHTER & HAMPTON LLP

Dated: November 15, 2021

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